

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FREDERICK WAYNE SMITH,

Plaintiff,

v.

KATHLEEN ALLISON, et al.

Defendants.

No. 1:22-cv-01580-JLT-SAB (PC)

FINDINGS AND RECOMMENDATION
RECOMMENDING PLAINTIFF'S REQUEST
FOR INJUNCTIVE RELIEF BE DENIED

ORDER GRANTING PLAINTIFF THIRTY
DAYS TO FILE AN OPPOSITION AND
DIRECTING CLERK OF COURT TO
CHANGE PLAINTIFF'S ADDRESS OF
RECORD

(ECF No. 29)

Plaintiff is proceeding pro se in this action filed pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff's document entitled "Declaration of Plaintiff Frederick Wayne Smith to Buttress Status Quo Pursuant to Reiteration of Retaliatory Transfer and Continuous Violation of Plaintiff's Constitutional Rights, Reiterate Notice Motion Injunction – TRO – Preliminary," filed August 7, 2023. (ECF No. 29.) Defendant filed a response on August 23, 2023. (ECF No. 30.) The Court finds a reply is not necessary and deems the motion submitted. Local Rule 230(l).

Although Plaintiff's filing is difficult to decipher it appears that he is requesting a preliminary injunction and extension of time to file an opposition to Defendant's exhaustion

1 motion for summary judgment.¹ (ECF No. 29.)

2 **I.**

3 **DISCUSSION**

4 **A. Preliminary Injunction**

5 The primary purpose of a preliminary injunction is preservation of the status quo. See,
 6 e.g., Ramos v. Wolf, 975 F.3d 872, 887 (9th Cir. 2020). More specifically, the purpose of a
 7 preliminary injunction is preservation the Court's power to render a meaningful decision after a
 8 trial on the merits. See Univ. of Texas v. Camenisch, 451 U.S. 390, 395 (1981); Barth v. Montejo,
 9 No. 2:19-cv-1874-DB-P, 2021 WL 1291962, at *1 (E.D. Cal. Apr. 7, 2021). It is meant to
 10 maintain the relative positions of the parties and prevent irreparable loss of rights before a trial
 11 and final judgment. Camenisch, 451 U.S. at 395; Ramos, 975 F.3d at 887; Doe #1 v. Trump, 957
 12 F.3d 1050, 1068 (9th Cir. 2020). A preliminary injunction may assume two forms. Marlyn
 13 Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 878 (9th Cir. 2009).
 14 Prohibitory injunctions prevent a party from acting, thus maintaining the status quo. Id. A
 15 mandatory injunction directs some responsible party to act. Id. at 879.

16 The legal principles applicable to requests for injunctive relief, such as a temporary
 17 restraining order or preliminary injunction, are well-established. To prevail, the moving party
 18 must show that irreparable injury is likely in the absence of an injunction. See Stormans, Inc. v.
 19 Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing Winter v. Nat. Res. Def. Council, Inc., 555
 20 U.S. 7, 20– 22 (2008)); see also Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131
 21 (9th Cir. 2011). To the extent that prior Ninth Circuit cases suggest a lesser standard by focusing
 22 solely on the possibility of irreparable harm, such cases are “no longer controlling, or even
 23 viable.” Am. Trucking Ass’ns, Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009);
 24 Stormans, 586 F.3d at 1127. Instead, the proper test requires a party to demonstrate: (1) he is
 25 likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of an
 26 injunction; (3) the balance of hardships tips in his favor; and (4) an injunction is in the public

27 _____
 28 ¹ The Court also notes that Plaintiff has apparently changed address multiple times without advising the Court which
 will be addressed below.

1 interest. Winter, 555 U.S. at 20; Cottrell, 632 F.3d at 1131; Stormans, 586 F.3d at 1127.

2 A preliminary injunction is an extraordinary remedy that is not awarded as of right.
3 Winter, 555 U.S. at 24; Cottrell, 632 F.3d at 1131. The burden to achieve injunctive relief is
4 particularly high when a party seeks a mandatory injunction. See Garcia v. Google, Inc., 786 F.3d
5 733, 740 (9th Cir. 2015). Mandatory injunctions go beyond an injunction preventing a party from
6 acting, and thus beyond mere maintenance of the status quo. Id. They require a party to act. Id.
7 District courts must deny requests for mandatory injunctions unless the law and facts clearly
8 favor a moving party. Id. The Court will not grant such requests in doubtful cases. Id.

9 Here, although Plaintiff titles his document request for preliminary injunction, it is not
10 clear why he believes an injunction is necessary. To the extent Plaintiff seeks an order preventing
11 any future transfer, such request must be denied. Plaintiff has failed to establish the imminent
12 irreparable harm required to support a preliminary injunction. See Winter, 555 U.S. at 20;
13 Cottrell, 632 F.3d at 1131. “The fact that plaintiff has met the pleading requirements allowing
14 him to proceed with the complaint does not, ipso facto, entitle him to a preliminary injunction.”
15 Claiborne v. Blausen, No. CIV S-10-2427 LKK, 2011 WL 3875892, at *8 (E.D. Cal. Aug. 31,
16 2011), report and recommendation adopted, No. CIV S-10-2427 LKK, 2011 WL 4765000 (E.D.
17 Cal. Sept. 29, 2011). Instead, to meet the “irreparable harm” requirement, Plaintiff must do more
18 than plausibly allege imminent harm; he must demonstrate it. Caribbean Marine Servs. Co., Inc.
19 v. Baldridge, 844 F.2d 668, 674 (9th Cir. 1988). This requires Plaintiff to demonstrate by specific
20 facts that there is a credible threat of immediate and irreparable harm. Fed. R. Civ. P. 65(b).
21 “Speculative injury does not constitute irreparable injury sufficient to warrant granting a
22 preliminary injunction.” Id. at 674-75.

23 Plaintiff contends only that on or around July 16, 2023, he was transferred to North Kern
24 State Prison where he was previously stabbed, but he is now housed at Kern Valley State Prison.
25 (ECF No. 29.) Plaintiff fails to set forth sufficient allegations of potential harm and risk of injury
26 are speculative, see Caribbean Marine, 844 F.2d at 674-75, and while Plaintiff may fear for his
27 future safety as a result of the transfer, he has failed to establish that he faces the immediate and
28 credible threat of irreparable harm necessary to justify injunctive relief at this stage of the case.

1 City of Los Angeles v. Lyons, 461 U.S. 95, 102 (1983); Goldie’s Bookstore, Inc. v. Superior
 2 Court of State of Cal., 739 F.2d 466, 472 (9th Cir. 1984) (“Speculative injury does not constitute
 3 irreparable injury.”); Rigsby v. State, No. CV 11-1696-PHX-DGC, 2013 WL 1283778, at *5 (D.
 4 Ariz. Mar. 28, 2013) (denying prisoner’s TRO based on fear of potential future injury based on
 5 past assaults); Chappell v. Stankorb, No. 1:11-CV-01425-LJO, 2012 WL 1413889, at *2 (E.D.
 6 Cal. Apr. 23, 2012) (denying injunctive relief where prisoner’s claims of injury based on current
 7 or future housing decisions were nothing “more than speculative.”), report and recommendation
 8 adopted, No. 1:11-CV-01425-LJO, 2012 WL 2839816 (E.D. Cal. July 9, 2012). Plaintiff has not
 9 identified any immediate threat to his safety and has not submitted evidence suggesting that there
 10 are inadequate safeguards in place to protect Plaintiff at Kern Valley State Prison. See Perez v.
 11 Diaz, No. 2:19-cv-1295 KJN P, 2019 WL 3229622, at *3 (E.D. Cal. July 18, 2019), report and
 12 recommendation adopted, 2019 WL 3986657 (E.D. Cal. Aug. 22, 2019) (“Generalized allegations
 13 of past incidents of violence fail to show that plaintiff ... faces imminent harm.”). Accordingly,
 14 Plaintiff’s second motion for a preliminary injunction and/or temporary restraining order should
 15 be denied.

16 **B. Extension of Time**

17 It appears that Plaintiff seeks an extension of time to file an opposition to Defendant’s
 18 pending exhaustion motion for summary judgment because he does not have access to his legal
 19 materials. In the interest of justice and assuming Plaintiff’s allegations to be true, the Court will
 20 grant Plaintiff thirty days to file an opposition. However, any future requests for an extension of
 21 time must be accompanied by a specific factual showing of “good cause” for the extension. Fed.
 22 R. Civ. P. 6(b)(1)(A).

23 **C. Change of Address**

24 Plaintiff’s current address of record in California Correctional Institution in Tehachapi.
 25 However, in the current request Plaintiff describes his location as North Kern State Prison on or
 26 around July 16, 2023, and lists his current location as Kern Valley State Prison. (ECF No. 29.)
 27 Defendant notes that he served his motion for summary judgment on June 22, 2023, at Tehachapi,
 28 and correctly points out that Plaintiff acknowledges receipt of the moving papers (ECF No. 29 at

2:13-18), so he clearly received the filing.

As Plaintiff was advised in the Court's first informational order, he is obligated to keep this Court informed of his current address. Specifically:

[a] party appearing in propria persona shall keep the Court and opposing parties advised as to his or her current address. If mail directed to a plaintiff in propria persona by the Clerk is returned by the U.S. Postal Service, and if such plaintiff fails to notify the Court and opposing parties within sixty-three (63) days thereafter of a current address, the Court may dismiss the action without prejudice for failure to prosecute.

Local Rule 183(b); see also Local Rule 182(f) (all parties are "under a continuing duty" to notify the clerk of "any change of address[.]").

Here, a review of CDCR's inmate locator reflects that Plaintiff is presented incarcerated at Kern Valley State Prison. See CDCR Inmate Locator, <https://inmatelocator.cdcr.ca.gov/>. Therefore, the interest of justice, the Court will make a one-time exception and change Plaintiff's address of record. However, Plaintiff is advised that he must file a new change of address anytime he is moved from one facility to another or if he is released from custody and the Court will not change the address for him which can result in dismissal of the action.

II.

ORDER AND RECOMMENDATION

Based on the foregoing, it is HEREBY ORDERED that:

1. Plaintiff is granted thirty (30) days from the date of service of this order to file an opposition; and

2. The Clerk of Court shall change Plaintiff's address of record to reflect that he is currently incarcerated at Kern Valley State Prison.

Further, it is HEREBY RECOMMENDED that:

1. Plaintiff's second motion for a preliminary injunction be denied.

This Findings and Recommendation will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **thirty (30) days** after being served with this Findings and Recommendation, the parties may file written objections with the Court. The document should be captioned "Objections to Magistrate Judge's Findings

1 and Recommendation.” The parties are advised that failure to file objections within the specified
2 time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39
3 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

4
5 IT IS SO ORDERED.

6 Dated: August 24, 2023


UNITED STATES MAGISTRATE JUDGE